

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

NOV 12 2013

SHELTON R. MODELIST

David J. Bradley, Clerk of Court

V.

CIVIL ACTION NO. 4:12 cv 03127

A.M. SANCHEZ, UNKNOWN HOUSTON
POLICE OFFICERS AND ABELARDO
VELEZ REYES

PLAINTIFF'S RESPONSE TO DEFENDANTS MOTION TO DISMISS AND
REQUEST FOR ORDER DENYING THAT SAME MOTION

1. Plaintiff moves for an order pursuant to FRCP Rule 12(a)(1)(C) to deny Defendant A.M. Sanchez's Motion to Dismiss Plaintiff's Original Complaint, allegedly filed on 14 August 2013.

2. The grounds for Plaintiff's response and requested order are based on Defendants continued acts of deception and misrepresentation, delayed and or obstructed mail delivery and that court order entered on 23 October 2013, responsive to Plaintiff's Motion for Extension of Time, filed on 21 October 2013.

BACKGROUND

3. Plaintiff's civil action is based in and authorized by 42 U.S.C. Sections 1983 and 1985 to redress Deprivation, under color of law, with claims against Defendants for conspiracy and falsification of official records and reports.

4. Plaintiff was unlawfully arrested, detained and put in the custody of the law (falsely imprisoned) without authority (false claims-reports) causing Plaintiff continual injuries, even within these instant court proceedings.

5. Plaintiff's 13 June 2010, unlawful custody and detention (false imprisonment) by Defendants has, and continually causes Plaintiff injury and compulsory delay, in doing daily chores and duties since 13 June 2010.

6. The statute of limitation concerning Plaintiff's injuries and damages related to that false imprisonment, only begins to accrue, upon the cessation of legal injuries

proximately caused by that particular repetitive act, which is attributable to the original wrongful act(s) of false imprisonment against Plaintiff.

7. Plaintiff's 42 U.S.C. Section 1983 federal claims, concerning accrual and limitation are governed by federal law, state law, and the continuing-tort doctrine.

ARGUMENT AND AUTHORITIES

8. Section 1983 provides a federal cause of action, under federal law and looks to state law for the length of time concerning that state's statute of limitation, from where the cause of action arose, that being Texas. Concerning this instant case, Texas Civil Practice and Remedies Code (Tex. Civ. Prac. & Rem. Code) § 16.003(a) governs personal injury-torts, which is two years. Wilson v. Garcia, 471 U.S. 261, 279-280.

9. Federal law concerning § 1983 that are not resolved by reference to state law is governed by federal rules conforming in general to common-law tort principles. Cary v. Phipps, 435 U.S. 247, 257-258. Under those principles, "the standard rule that accrual occurs when the plaintiff has a complete and present cause of action". Wallace v. Kato, 549 U.S. 384. The civil wrong (false arrest and false reports) committed by Defendants conspiring, that caused Plaintiff damages and to assume that Plaintiff injuries were "complete and present" occurred on about 28 October 2010. **See Exhibit BB.**

10. Texas law concerning § 1983 is governed in general by common-law tort principles. Under those principles "the applicable statute of limitation generally begins to run at the time when a complete cause or right of action accrues or arises". Holloway v. Butler, 662 S.W.2d 688. The civil wrong (false arrest and false reports) committed by Defendants conspiracy, that caused Plaintiff damages and to assume that Plaintiff injuries were "complete and present" occurred on about 28 October 2010. **See Exhibit BB.**

11. Texas law concerning § Section 1983 and false arrest are also governed by common-law tort principles concerning 'Continuing-tort doctrine'. "A continuing tort involves a repeated injury proximately caused by repetitive wrongful acts", stemming from original wrongful acts. Krohn v. Marcus Cable Assocs., 201 S.W.3d 876, 880. Under this doctrine "if the Defendant commits a continuing tort, the action accrues when the tortious conduct ceases". Adler v. Beverly Hills Hosp., 594 S.W.2d 153, 155-56.

CONCLUSION

Accrual of Right of Action

12. Plaintiff was first injured on at the date that Defendants conspired to unlawfully arrest Plaintiff with the use of fabricated and false records and reports. Those false reports are the bases for Plaintiff's 42 U.S.C. Section 1983 claims for legal injury and damages.

13. Plaintiff was arrested without justification on 13 June 2010, after Defendants conspired with Defendant Reyes and using false reports. The arrest case was dismissed

on 21 October 2010. Plaintiff was further injured on 28 October 2010, after Defendant Reyes filed fraudulent insurance claims against Plaintiff using same false reports.

14. Plaintiff's cause of action concerning the unlawful misconduct by Defendants posing under the color of law, accrued on 28 October 2010

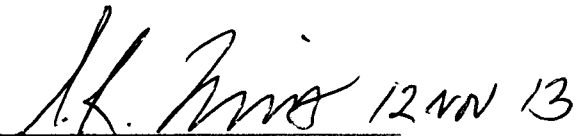
15. Plaintiff filed this instant case, civil action # 12-3127, concerning the unlawful misconduct by Defendants posing under the color of law, on 19 October 2012, before the statute of limitation expired.

16. However, the accrual and limitation time has changed, Lee H. Rosenthal has seen it necessary to refuse its oath of office and litigate on behalf of Defendants, thereby, also causing injury to Plaintiff.

DECLARATION UNDER PENALTY OF PERJURY

"I declare under penalty of perjury that the foregoing is true and correct."

EXECUTED on 12 November 2013.

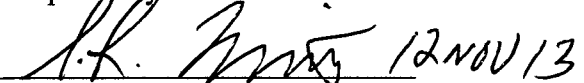

Shelton R. Modelist

CERTIFICATE OF SERVICE

I certify that on 12 November 2013, a copy of Plaintiff's Response to Defendants Motion to Dismiss was served by certified U.S. mail, return receipt requested, on the following attorney in charge for Defendants: Mayra Cuello 900 Bagby, 3rd Floor Houston, Texas 77002, phone 832-393-6270.

CERTIFIED MAIL # 7011 0110 0002 3451 7795

Respectfully Submitted


SHELTON R. MODELIST
P O Box 330427
Houston, Texas 77233
Phone No. 713-733-6994

State Farm Insurance Companies



October 28, 2010

State Farm Claims
P.O. Box 799011
Dallas, TX 75379-9011

Fax: (888) 257-6076 Toll Free

Shelton R Modelist
5619 Lakefield Dr
Houston, TX 77033-3311

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David J. Bradley, Clerk of Court

RE: Claim Number: 53-G548-140
Policy Number: C140-178-53I
Date of Loss: July 10, 2010
Our Insured: Shelton R Modelist

Dear Shelton R Modelist:

We have settled the claim of Albelardo Reyes arising out of the above-referenced occurrence. You will have no personal obligation to pay any portion of the settlement.

Please contact us should you have any questions or concerns regarding this claim.

Sincerely,

Cindy Mendoza - Team 50
Claim Processor
(888) 257-6077

State Farm Mutual Automobile Insurance Company

